IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 473 of 1997
with
MISC CIVIL APPLICATION No 1556 of 2004
in
SPECIAL CIVIL APPLICATION No 473 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAPURAM BHURAJI
Versus
PATEL STEEL & RE-ROLLING MILLS

Appearance:
1. Special Civil Application No. 473 of 1997
MR RV DESAI for Petitioner No. 1-2
MS BINODA GAJJAR for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 21/09/2004

COMMON ORAL JUDGEMENT

ORDER ON MCA NO.1556 OF 2004

Heard Mr.R.V.Desai, learned advocate appearing on behalf of the applicant. For the reasons stated in the application and considering the averments, supported by affidavit, present application is allowed. The order dated 6.9.2004 is recalled. The main matter is restored to its original file with all attached orders on the date of order dated 6.9.2004.

Misc. Civil Application stands allowed. No order as to costs.

ORDER ON SPECIAL CIVIL APPLICATION NO.473 OF 1997

Today, pursuant to the aforesaid order, this Court has restored the present petition and since it is listed with Misc. Civil Application for hearing, the same is taken up for hearing and being disposed of accordingly.

Heard Mr.R.V.Desai, learned advocate on behalf of the petitioner. No appearance is entered on behalf of the respondents after Ms.BINODA GAJJAR elevated in judiciary.

.RS 2.

#. In the present petition, the petitioner has challenged the order passed below Exh.10 in Misc. Application No.43 / 1996 Annexure-F pg.38 dated 2nd November, 1996, wherein the exparte order made by the Payment of Wages Authority, has been set aside with cost of Rs.500/- and main Payment of Wages Application No.784 of 1994 was restored to the original file. Learned advocate Mr.Desai has submitted that because of pendency of this petition, payment of wages authority did not proceed with the matter and no further proceeding has been initiated though no stay has been granted by this Court against further proceedings before the Payment of Wages Authority. Therefore, the matter remained pending for more than eight years only on the ground of pendency of this petition when there is no stay against further proceedings.

#. The Payment of Wages Authority has decided the application filed by the petitioner in absence of the respondent exparte on 19th October, 1995 and directed the respondents to pay Rs.78,564.64 ps to the applicant Shri

Kapuraram Bhuraji and Rs.69,346.47 ps to the applicant Shri Rameshkumar Rataji within one month. This order passed by the Payment of Wages Authority, Ahmedabad below Exh.8 in absence of the respondent, for that, there is no dispute between the parties. The respondent has filed application before the Payment of Wages Authority with prayer to set aside the exparte order. Against the application, reply was filed by the petitioner and ultimately, the Payment of Wages Authority has allowed the application filed by the respondent and set aside the exparte order passed by the Payment of Wages Authority.

#. Mr.Desai, learned advocate for petitioners raised contentions that payment of wages authority has committed gross error in considering the Central Rules of Payment of Wages Act. That said Rules are not applicable. It is also contended that there is no provision in Gujarat Rules and instead of said application, the respondent ought to have filed appeal against the order dated 19th October, 1995 being exparte order. He also submitted that Payment of Wages Authority has presumed certain aspects for Postal Department, for that, there is no oral evidence led by the respondents and proved the facts before the authority. Therefore, the Authority concerned has committed gross error. Except the contentions recorded above, none other contention or citation pressed into service before this Court by the learned advocate Mr.R.V.Desai.

#. I have considered submissions made by the learned advocate Mr.Desai and also perused the order in question. The only contention was raised before the Authority as well as raised in the reply that since it is Central Rules, Payment of Wages Authority functioning at Ahmedabad had no jurisdiction to set aside the exparte order. The Central Rules are not applicable to the Payment of Wages Authority and therefore, the order impugned is required to be set aside. However, it is not disputed by the learned advocate Mr.Desai that in Gujarat Rules, there is no provision to set aside the exparte order. Relevant provisions of the Central Rules has been referred to and quoted by the Payment of Wages Authority, which provides that if the employer fails to appear on the specified date, the authority may proceed with hearing and determine application exparte. If Payment of Wages Authority decides application in absence of the employer, then, if an employer makes an application to rehear the matter on good cause, then, after issuing notice to the workman, the authority can decide the matter whether rehearing is necessary or not. Therefore, looking to the Central Rules, there is provision under

Rule 8 which gives powers to the Payment of Wages Authority to rehear the matter in case the matter is decided exparte.

#. The Payment of Wages [Procedure] Rules, 1937 amended upto June, 1959 published in Notification No.L 307 New Delhi dated 24th February, 1937. The Rules framed while exercising the powers conferred by sub Section [1] of Section 26 of the Payment of Wages Act, 1936 read with Section 22 of the General Clauses Act, 1897, the Governor General in Council is pleased to make following Rules and the same having been previously published as required by Sub Section [5] of Section 26 of First Name of the Act. This Rules are applicable to whole of India. Therefore, considering the provision of Rule [8] which also applies to the present proceedings because that Rule is applicable to whole of India and powers to frame Rules are given to State Government but actually, this Rules framed by Central Government having application of such Rules in whole of India, in my opinion, this Rules are applicable to the facts of the present case and the Payment of Wages Authority has rightly relied upon the said Rules and passed the order.

#. Learned advocate Mr.Desai is not able to point out any Rule of the State before this Court. Mere submission is made that there is no provision in Gujarat Rules but in reality, there is no Gujarat Rules because the Central Rules are applicable as per the Notification dated 24th February, 1937 and the said Rules are applicable to whole India. Therefore, relevant Rule-8 which relied upon by the Payment of Wages Authority is wholly applicable to the case before the authority and the authority has jurisdiction to entertain such application filed by the respondents and to decide the same in accordance with law. Rule [8] of Payment of Wages [Procedure] Rules, 1937, since, relevant is referred to as under :

"8. Appearance of parties : - [1] If the application is entertained, the Authority shall call upon the employer by a notice in Form E to appear before him on specified date together with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

[2] If the employer or his representative fails to appear on the specified date, the Authority may proceed to hear and determine the application exparte.

[3] If the applicant fails to appear on the specified date, the Authority may dismiss the application;

Provided that an order passed under sub-rule [2] or sub - rule [3] may be set aside and the application re-heard on good cause being shown within one month of the date of the said order, notice being served on the opposite party of the date fixed for re-hearing."

#. Therefore, once the authority is empowered to decide such application under the Rules, then question of having no jurisdiction does not arise and such submission made before this Court is not accepted only on the ground that the Rules is made applicable to the present proceedings also. As such, no other Rule has been pointed out by the learned advocate Mr.Desai.

#. So far as the contention as to drawing of certain presumption as regards Postal Department, the authority has given sufficient reasons in para-4 that each and every notice received by the company then why notice issued by the Court was not received with an endorsement of "refused". Therefore, there was something rightly presumed by the authority, for that, the tribunal has not committed any error. The Apex Cout has considered similar question in Industrial Disputes Act, 1947. There is specific provision in Industrial Disputes [Gujarat] Rules, 1966 empowering the Labour Court to set aside the exparte award under Rule 26[A] of the Rules. But there is no provision under the Central Rules of Industrial Disputes Act. Therefore, in a case where the award passed by the Central Tribunal exparte and the employer has moved application before the authority to set aside the exparte award. The contention was raised by the workman that there is no provision in Rules which gives powers to the Labour Court to set aside the exparte award. Therefore, that aspect has been examined by the Apex Court in case of GRINDLAYS BANK LTD. V. THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AND OTHERS, AIR 1981 SC 606. The relevant observations made by the Apex Court in aforesaid case to the effect that "it is true that there is no express provision in the Act or the Rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. The words "shall follow such procedure as the arbitrator or

other authority may think fit" occurring in S.11 are of the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such procedure as the justice of the case demands."

##. Therefore, considering the above observations of the Apex Court in almost similar situation, according to my opinion, the Payment of Wages Authority has not committed any error which found apparently on the face of record. Notice issued by the Authority not received by the Company and for that reason, the company remained absent before the Payment of Wages Authority. Therefore, it was good cause shown by the employer to set aside the exparte order and restored the original application on record, for that, no error has been committed by the Authority in restoring the original application. Even otherwise also, it is better that Court should examine the matter after giving opportunity to both the parties so that the merits can be examined by the Court properly with the assistance of both the parties. Therefore, considering the entire facts and circumstances of the case and relevant provisions of the Rules which applicable to the facts of present case and looking to the observations made by the Apex Court, submission made by the learned advocate Mr.Desai is not accepted and the same is rejected.

##. In view of above discussion, in my opinion, the authority has not committed any error which apparently found on the face of the record and as such, there found no procedural irregularity committed by the Authority and the finding given by the Authority is not perverse and baseless. Therefore, there is no substance in the present petition and the same is rejected accordingly.

Rule is discharged. No order as to costs.

Date : 19.9.2004 [H.K.Rathod, J.]

#kailash, ps#